

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the ALS License
Application of Murphy Meeker County
Ambulance Service, Inc., of Litchfield,
Minnesota

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Jon L. Lunde commencing at 7 p.m. on Thursday, April 20, 1995 at the Meeker County Courthouse in Litchfield, Minnesota. The hearing was held pursuant to a Notice of Completed Application and Notice of and Order for Hearing dated March 1, 1995. The record closed at the conclusion of the hearing on April 20.

Thomas J. Fennell, Director of Operations, Murphy Meeker County Ambulance Service, Inc., P.O. Box 1614, St. Cloud, Minnesota 56302, appeared on behalf of Murphy Meeker County Ambulance Service, Inc. (Applicant). No one petitioned to intervene in this proceeding or filed any written comments opposing the license application, and only three persons appeared at the hearing. Apart from Mr. Fennell, only one other person spoke. That person, Paul Anderson, Chief Operating Officer of Gold Cross Ambulance, spoke in support of the application.

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Health will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Anne M. Barry, Acting Commissioner, Minnesota Department of Health, P.O. Box 944, 717 Delaware Street SE, Minneapolis, Minnesota 55414, telephone (612) 623-5000, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether Murphy Meeker County Ambulance Service, Inc. should be licensed to provide advanced life support (ALS) in its amended primary service area under Minn. Stat. § 144.802, subd. 3(g) (1994).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Effective January 17, 1995, Murphy Meeker County Ambulance Service, Inc. purchased the capital assets of Mergen Care Services of Litchfield, Minnesota, and Mergen's operating license was transferred to the Applicant. Shortly thereafter, on or about February 2, 1995, the Applicant filed a license application with the Department to change the type of service it provides in Meeker County from basic life support (BLS) to advanced life support (ALS).

2. On March 1, 1995, the Acting Commissioner of Health, Anne M. Barry, issued a Notice of Completed Application and Notice of and Order for Hearing wherein she scheduled a public hearing on the application. On Monday, March 13, 1995, the Notice of Completed Application and Notice of and Order for Hearing was published at 19 State Register 1903 (Ex. 5), and on March 23 and 30, 1995, it was published in the Litchfield Independent Review (Ex. 2).

3. Copies of the Commissioner's Notice of Completed Application and Notice of and Order for Hearing were mailed by the Department to the Litchfield Independent Review, the Meeker County Board of Commissioners, the Meeker-McLeod-Sibly Community Health Board, the Community Health Services Administrator for the Meeker-McLeod-Sibly Community Health Board, the Southwest Minnesota EMS Corporation, the Cosmos, Watkins, and Hutchinson Community Hospital Ambulance Services and the mayor of the City of Litchfield. Ex. 4.

4. The Applicant is currently licensed to provide BLS services throughout Meeker County under License No. 137. Three other ambulance services operate in parts of Meeker County: Cosmos Ambulance Service, Watkins Ambulance Service, and Hutchinson Community Hospital Ambulance Service.

5. As part of its application, the Applicant proposes to restrict its primary service in Meeker County to the following areas:

<u>Township</u>	<u>Range</u>	<u>Section</u>
117N	R31W	Sections 1-5
118N	R29W	Sections 1-12
118N	R30W	Sections 1-12, 16-21, 28-33
118N	R31W	Sections 1-17, 20-29, 32-36
118N	R32W	Sections 1-12
119N	R29W	All Sections
119N	R30W	All Sections
119N	R31W	All Sections
119N	R32W	All Sections
120N	R29W	Sections 7-36
120N	R30W	Sections 7-36
120N	R31W	Sections 3-36
120N	R32W	All Sections

121N	R31W	Sections 6-7, 18-19, 30-34
121N	R32W	All Sections

6. The Applicant has executed primary service area (PSA) agreements with the three other ambulance services serving Meeker County. Under these agreements, the other services will be the primary provider in the following areas:

Cosmos Ambulance Service

<u>Township</u>	<u>Range</u>	<u>Section</u>
117N	32W	All
117N	31W	6-12, 15-22, 27-34
118N	32W	13-36
118N	31W	18, 19, 30, 31

Watkins Ambulance Service

121N	30W	All Sections
121N	29W	19-36
120N	29W	1-6
120N	30W	1-6
120N	31W	1-2
121N	31W	1-5, 8-17, 20-29, 35,

36

Hutchinson Community Hospital Ambulance Service

118N	29W	13-36
118N	30W	13-15, 22-27, 34-
117N	31W	13, 14, 23-26, 35,

36

36

Ex. 1, Part 8 and Ex. 9

7. Although the Applicant's PSA includes Township 121N, Range 32W, this area is currently served by the Paynesville Ambulance Service located in Stearns County. The Paynesville Ambulance Service apparently isn't licensed to serve the area but does so with the Applicant's consent. Applicant is willing to permit the Paynesville Ambulance Service to continue providing ambulance services in the area as long as it desires to do so, and the Applicant has a "gentleman's agreement" with the Paynesville Ambulance Service authorizing Panesville to serve the area.

8. The Applicant's base of operations is located at 701 North Sibly in Litchfield, Minnesota. It operates no substations. The Applicant is affiliated with the Meeker County Memorial Hospital in Litchfield and the St. Cloud Hospital in St. Cloud,

Minnesota. The Meeker County Memorial Hospital apparently will be the primary hospital Applicant will use.

9. The Applicant has mutual aid agreements with other ambulances services who have agreed to provide back-up coverage for it. The four back-up services are: Meeker Ambulance Service of St. Cloud (EMS No. 215), the Watkins Ambulance Service (EMS No. 262), Hutchinson Community Hospital Ambulance Service (EMS No. 113), and the Cosmos Ambulance Service (EMS No. 058).

10. The Applicant's maximum response time to the most distant point (20 miles) in its PSA is twenty minutes, but its average response time is expected to be approximately five minutes. The Applicant will serve approximately 18,000 residents and 65,000 visitors. It projects that it will have 715 annual runs. Most of them (529) will be advanced runs. Only 76 are expected to be basic runs. The Applicant will provide ALS intercepts for other ambulance services bringing patients to the hospital in Litchfield.

11. Respondent will not be the recipient of governmental subsidies but will operate strictly on a fee-for-service basis. Its average BLS patient charges currently are \$500. Its BLS fees will not increase if its application is approved. Its ALS fee will be \$650 per run. Because most of its runs will now be ALS, fees will increase by approximately \$150 for most runs. The \$650 ALS fee proposed is consistent with the ALS fees charged by the Applicant's owner, Murphy Ambulances Services, Inc., under licenses it operates covering parts of Stearns, Benton, and Sherburne Counties. Most of the Applicant's fees will be paid by third-party payers; only 30 percent of the runs will be paid by the patients themselves.

12. The public service answering point in Meeker County is in the City of Litchfield at the Sheriff's department. The Meeker County sheriff dispatches ambulances in the PSAs served by the Applicant, the Cosmos Ambulance Service and the Watkins Ambulance Service. The sheriff does not directly dispatch ambulances to those areas of Meeker County served by the Hutchinson Community Hospital Ambulance Service or the Paynesville Ambulance Service. Ambulances are dispatched to those areas by the sheriffs of McLeod and Stearns Counties respectively.

13. The Applicant's application to upgrade its license is supported by the Mayor of Litchfield, Meeker County Sheriff, Litchfield Fire Department, Litchfield Chief of Police, City of Dassel, the Grove City Fire Department, Meeker County Board of Commissioners, Meeker County Public Health Department, Litchfield Rescue Squad, and the Dassel Fire Department. Ex. 1, part 9.

14. Approving the application will reduce morbidity and mortality in the Applicant's proposed PSA.

15. The application is consistent with the Consolidated Community Health Systems Plan for Meeker, McLeod, and Sibley Counties, and is consistent with the State's 1993 Emergency Medical Services Plan.

16. The Applicant is currently negotiating the sale of its ambulance service to Gold Cross Ambulance (Gold Cross). Gold Cross is a wholly owned subsidiary of the Mayo Clinic. Approximately one year ago, Gold Cross purchased four ALS ambulance

services operating in the cities of Rochester, Mankato, Owatonna, and Duluth. At the time of the hearing, the Applicant and Gold Cross expected that the purchase agreement would be finalized on or about May 1, 1995. In the event that the sale is finalized, the Applicant's current director of operations, Thomas Fennell, will become a member of Gold Cross's management team.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of the Minnesota Department of Health and the Administrative Law Judge have authority to consider the license application filed by Meeker County Ambulance Service, Inc. under Minn. Stat. §§ 14.50 and 144.802 (1994).

2. Proper notice of the application and of the hearing were given in full compliance with the provisions of Minn. Stat. § 144.802, subd. 3 (1993).

3. The Notice of and Order for Hearing was proper in form and content and the Department and the Applicant have complied with all relevant substantive and procedural requirements of statute and rule.

4. The Applicant has the burden of proof under Minn. Rules pt. 1400.7300, subp. 5 (1993) to show that upgraded license is needed and will not have a deleterious affect on the public health. Matter of Rochester Ambulance Service, 500 N.W.2d 495, 498-99 (Minn. Ct. App. 1993).

5. Under Minn. Stat. § 144.802, subd. 3(g), the Administrative Law Judge is required to review and comment on the city's application and make written recommendations regarding its disposition to the Commissioner. In making those recommendations, the Judge must consider and make written comments concerning the need for the service proposed based upon a consideration of the following factors:

1. the relationship of the proposed service, change in base of operations or expansion in primary service area to the current community health plan as approved by the Commissioner under section 145A.12, subdivision 4;
2. the recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;
3. the deleterious effects on the public health from duplication, if any, of ambulance services that would result from granting the license;
4. the estimated effect of the proposed service,, change and base of operation or expansion in primary service area on the public health;
5. whether any benefit accruing to the public health would outweigh the costs associated with the proposed service, change in base of operations, or expansion in primary service area.

6. The ALS ambulance service license the Applicant proposes to obtain is consistent with Meeker County's current community health plan and is supported by the Meeker County Board of Commissioners and communities in the proposed primary service area.

7. The Applicant established that upgrading its BLS license to an ALS level will enhance the public health in those areas of Meeker County not currently served by an ALS ambulance service.

8. There will be no duplication of ambulance services if the Applicant's application is approved because there will be no overlapping primary service areas in Meeker County.

9. Granting the application will reduce mortality and morbidity within the Applicant's new primary service area.

10. The benefits accruing to the public health of citizens in the Applicant's proposed PSA will outweigh the costs associated with the Applicant's proposed upgrading of its license to an ALS level.

11. ALS ambulance service is needed in the Applicant's proposed PSA.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of Health GRANT Meeker County Ambulance Service, Inc. an advanced life support ambulance license for those areas of Meeker County it proposes to serve consistent with its agreements with other ambulance services.

Dated this 4th of May, 1995

JON L. LUNDE
Administrative Law Judge

Reported: Taped, 1 Tape

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Commissioner of Health is empowered to license ambulance services within the state under Minn. Stat. § 144.802, subd. 1. Under the statute, an ambulance service desiring to provide a higher level of service must obtain a new license from the Commissioner. One of the predominant purposes of the statute is to eliminate competition among ambulance services. In Twin Ports Convalescent, Inc. v. Minnesota State Board of Health, 257 N.W.2d 343, 348 (Minn. 1977), the court discussed this purpose, stating:

We interpret Minn. Stat. § 144.802 to manifest a legislative intention to protect the public welfare against deleterious competition in the ambulance services field. The provision embodies a legislative determination that the ambulance service business is one in which the public welfare is not promoted by free enterprise. Ambulance service is essential to a community. It is also a service for which demand is inelastic and expenses largely fixed. Where the demand is insufficient to support additional services, either quality is sacrificed or rates and public subsidies are increased, but in either event, the tax payer-consumer suffers.

Accord Matter of Rochester Ambulance Service, 500 N.W.2d 495, 499 (Minn. Ct. App. 1993).

The Applicant's proposed PSA technically does not overlap any other PSAs. Therefore, there should be no deleterious competition between the Applicant and other ambulance services in or about Meeker County. Although there will be no overlapping PSAs if the Applicant's application is granted, one factor deserves further consideration. That is the Applicant's intention not to operate in that part of the proposed PSA which is currently served by the Panesville Ambulance Service in parts of Union Grove and Manannah Townships. The Applicant noted that the Panesville Ambulance Service will serve portions of those townships, which are located in the northwest corner of Meeker County. It isn't clear if the Panesville Ambulance Service can provide services to this area as quickly as the Applicant and the Panesville Ambulance Service is only authorized to provide BLS services. Because there technically will not be any deleterious competition in the area served by the Panesville Ambulance Service, the Applicant's proposed PSA should be approved. Nonetheless, the Department staff should investigate and determine the propriety of the Applicant's arrangement with the Panesville Ambulance Service because it, in fact, alters the PSAs of the Applicant and the Panesville Ambulance Service.

The application filed by the Applicant received widespread support, and no one submitted any comments or testimony in opposition to it. Granting an ALS license to the Applicant will enhance the public health because it will be able to provide medical services it cannot now provide under its current BLS license. Ambulance services licensed to provide BLS services cannot use esophageal obturator airways, cardiac monitors or defibrillators. Furthermore, they cannot establish or maintain intervenous therapy or intervenous infusion and cannot administer drugs other than oxygen, syrup of ipecac and nonprescription drugs. Minn. Rules pt. 4690.0800, subps. 2 and 4 (1993). If the license request is granted, these additional, higher-level ambulance services can be provided. This will obviously benefit citizens of Meeker County by making life-saving treatments more immediately available to them. Prompter and more thorough ALS services will help save lives and reduce the seriousness of some injuries. This will, in the long run, save costs.

The proposed licensure at an ALS level does involve a cost increase. However, the proposed fees for ALS runs is consistent with the fees charged by ambulance services serving Stearns, Polk and Benton Counties and was not shown to be unusual or excessive. Some cost increases must be expected in upgrading licensure levels due to the need for more highly trained staff and more sophisticated equipment. Under the circumstances, it is concluded that the benefits to the public health of Meeker County citizens will outweigh the costs associated with the higher level of service the Applicant proposes to provide.

JLL